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FISCAL IMPACT STATEMENT

LS 7250

BILL NUMBER: HB 1938

NOTE PREPARED: Jan 18, 2003

BILL AMENDED:

SUBJECT: Involuntary commitment.

FIRST AUTHOR: Rep. Reske

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a sex offender may be involuntarily committed to a state inpatient psychiatric institution or state correctional facility for treatment.

Effective Date: July 1, 2003.

Explanation of State Expenditures: This bill would affect three different state agencies at different points of time:

Agencies Affected: The *Department of Correction (DOC)* may request that a sex offender be committed under a civil proceeding.

The *Office of the Attorney General (AG)* shall appoint a review team to review the records of each person referred to AG's office by the Department of Correction. If the review team determines that the offender in question is a sexually violent offender, the Attorney General has the discretion to file a petition with a court for a probable cause hearing not later than 30 days after the written findings of the review team. If the court determines that the offender is likely to offend again, the court shall conduct a trial, which can be by jury, within 60 days of the probable cause hearing.

If the court determines that the offender has a mental abnormality that will likely make the offender offend again, the court will commit the offender to the custody of the *Division of Mental Health and Addiction (DMHA)* or be placed in a correctional facility. The offender will then remain in one of these institutions until the offender is in the opinion of the court, no longer a danger to commit a sex crime. The Division shall develop and implement a treatment program for the offender..

Estimating the Number of Offenders Affected: Offenders would come from the Department of Correction after serving a term of imprisonment after being convicted of a sex crime.

The Department of Correction projects that for FY 2003, 609 sex offenders will be released. Based on discussions with the assistant attorney general in the state of Kansas, the Kansas AG's office filed probable cause petitions against roughly 10% of the sex offenders scheduled for release.

Number of Offenders Brought to Trial After Probable Cause Petition:				
Based on FY 2003 Projected Releases:		Based on Experience in State of Kansas		Number of Offenders
600	x	10%	=	60

Of these, roughly 50% of these offenders are estimated to be committed in this civil process as a violent sexual predator. Consequently, in any given year, 60 offenders would be subject to a probable cause hearing and 30 offenders could be committed to the Division of Mental Health and Addiction.

Number of Offenders Committed As Sexual Predators:				
Based on Number of Offenders Brought to Trial		Percent Committed based on Kansas Experience		Number of Committed Offenders
60	x	50%	=	30

The number of offenders who could be committed and serving time in DMHA facilities by 2010 would depend on how long the offenders would remain in the program. The civil commitment law has existed in Kansas since 1995, and one offender has been released and three are in the transitional or conditional stage of release as of this date. Consequently, if on average, offenders remain in the DMHA facility for seven years, the accumulated population in this new facility could be 210 before any offenders begin to be released into a halfway house (see below).

Potential Number of Offenders In Committed Violent Sex Offender Unit Managed by the DMHA If Offenders Are Released After Seven Years By Fiscal Year							
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Cumulative Number of Sexual Predators	30	60	90	120	150	180	210

Estimated Costs By Agency:

Department of Correction: Detaining an offender would not affect the Department of Correction's prison capacity if all evaluations and court decisions were made prior to the offender's earliest possible release date. DOC would incur transportation and related security costs when an offender needs to appear in court in a civil commitment hearing. Transportation and related security costs will be greater if the AG's office files these cases in the courts in which these offenders were originally sentenced rather than in the county in which the offender is confined.

Office of the Attorney General: The estimated staff needed include two deputy attorneys, two investigators, and a part time secretary. The estimated staff costs for these employees is \$195,582 in FY 2004 and \$194,988 in FY 2005. These costs include salaries, fringe benefits, and indirect costs.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. According to the December 7, 2002, manning table, the Attorney General's Office had 13 full-time vacancies for attorneys, at least five vacancies for clerical workers, and three vacancies for investigators.

Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Division of Mental Health and Addiction Services: DMHA expenditures for this bill would depend on the facilities these offenders may be housed in or, if an interagency agreement is reached, what DOC facilities might house them.

FSSA anticipates that a new facility would have to be built to house these offenders. [Note: These added costs will be included in a later update of the fiscal note for this bill.]

The estimated cost of housing is based on the annual cost per patient at the Isaac Ray Unit at \$375 per day or \$136,875 per year. FSSA also indicates that the hospital facility would incur an additional cost of \$31,487 for security costs per year for each predator. These security costs are not included in the total costs shown below.

Once the court determines that beyond a reasonable doubt that the sex offender's mental abnormality or personality disorder has been treated, the court shall then order the sex offender to be placed in a halfway house or work release program. The Division would be required to provide a treatment program for the sex offender. (The costs of a halfway house are not included in this analysis, since it is anticipated that the sex offender would not be placed in a halfway house until after FY 2010.

The director of the halfway house or work release center may file a petition with the court that committed the offender to DMHA that the offender be put on a conditional release. During this conditional release, the offender will be supervised by a probation officer. If the offender does not violate the terms of the conditional release for five years, the offender is eligible to be discharged depending on the outcome of a final court hearing.

The bill also specifies that these confined offenders be given treatment. Cost estimates for treatment depend on the types of services necessary.

Summary of Costs for the State:

Summary of Expenses For Civil Commitments for Sexual Predators for State Agencies Projected Through FY 2010 (In Millions)							
<u>FY</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
DOC	minimal costs if court decisions are made before offender's release date						
AG	\$0.19	\$0.19	\$0.20	\$0.20	\$0.21	\$0.21	\$0.22
DMHA	<u>\$ 4.11</u>	<u>\$8.21</u>	<u>\$12.32</u>	<u>\$16.43</u>	<u>\$20.53</u>	<u>\$24.64</u>	<u>\$28.74</u>
Total	<u>\$4.30</u>	<u>\$8.40</u>	<u>\$12.52</u>	<u>\$16.63</u>	<u>\$20.74</u>	<u>\$24.85</u>	<u>\$28.96</u>

Explanation of State Revenues:

Explanation of Local Expenditures: Two entities would incur added costs because of this bill: the courts and the probation officers.

Courts: Courts would likely incur more expenses for the civil commitment procedures as well as for the professional evaluations of persons held in county jails to determine whether a person should be committed to the DMHA.

As an illustration of the added expenses that counties would incur, there are three types of costs that would be specifically identifiable with each offender who is tried as a sex offender and each offender determined to be a sexual predator.

For each offender against whom the Attorney General petitions for a probable cause hearing and assuming that each offender is committed through this civil process, the offender has the right to a jury trial and the right to an examination.

If each jury trial involves a 12 member jury with an alternate, and the jury trial lasts two days, the cost per trial could be as high as \$1,040 (\$520 for jury fees for each day) and fees for a psychiatric examination (assume 3 hours of service at \$100 per hour) and for legal assistance (assume 15 hours at \$100 per hour).

The total cost for a jury trial for an offender could be the following.

Estimated Cost for One Jury Trial to Determine Whether a Person is a Sexual Predator		
<u>Cost Item</u>	<u>Method</u>	<u>Estimated Cost</u>
Jury Fees	13 members x \$40 per day x 2 days	\$1,040
Expert Witness Fees	3 hours x \$100 per hour	\$300
Legal Expenses	15 hours x \$100 per hour	<u>\$1,500</u>
Total Costs for Single Jury Trial		<u>\$2,840</u>

If all offenders were declared indigent and all requested jury trials, counties could be subject to the following annual expenses each year.

Estimated Costs for Jury Trials:				
<u>Number of Jury Trials</u>		<u>Cost Per Trial</u>		<u>Annual Cost of Trials</u>
60	x	\$2,840	=	\$170,400

In addition to these trials, each committed sexual predator has the right to an annual review. Assuming that each hearing involves an attorney representing the person and an expert witness, the average costs for a hearing would be the following.

Estimated Cost For An Annual Review:		
<u>Cost Item</u>	<u>Method</u>	<u>Estimated Cost</u>
Expert Witness Fees	2 hours x \$100 per hour	\$200
Legal Expenses	4 hours x \$100 per hour	<u>\$400</u>
Total Cost for Annual Hearing		\$600

As the cumulative number of offenders committed as sexual predators increases, the costs of annual hearings will also increase.

Based on the projected number of cumulative sexual predators who are committed, the costs of both the added jury trials and annual reviews are projected between 2004 and 2010 to be the following.

Estimated Costs for Counties:

Potential Number of Offenders In Committed Violent Sex Offender Unit Managed by the Division of Mental Health and Addiction If Offenders Are Released After Seven Years							
<u>Costs of:</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Annual Reviews	\$18,000	\$36,000	\$54,000	\$72,000	\$90,000	\$108,000	\$126,000
Jury Trials	<u>\$174,000</u>	<u>\$174,000</u>	<u>\$174,000</u>	<u>\$174,000</u>	<u>\$174,000</u>	<u>\$174,000</u>	<u>\$174,000</u>
Total Costs:	<u>\$192,000</u>	<u>\$210,000</u>	<u>\$228,000</u>	<u>\$246,000</u>	<u>\$264,000</u>	<u>\$282,000</u>	<u>\$300,000</u>

Probation Officers: Probation officers would be required to monitor these sex offenders once they are released from the halfway houses. Because of the length of time that sex offenders would spend in civil commitment, it is likely that the first group of sex offenders released from civil commitment and a halfway house would not be released to a probation officer for seven to ten years after this bill is passed. Consequently, it is not likely that these offenders would not be released until FY 2010 at the earliest.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; Division of Mental Health; Attorney General; State Parole Board.

Local Agencies Affected: Probation Offices

Information Sources: Department of Correction Planning Division and Legal Division; Loren Snell, Assistant Attorney General, Civil Litigation, Kansas Office of Attorney General

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